

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF VIRGINIA  
Alexandria Division

In re:	)	
	)	
TK SERVICES, INC.,	)	Case No. 14-11062-BFK
	)	Chapter 11
Debtor.	)	
_____	)	

**DISCLOSURE STATEMENT FOR THE FIRST AMENDED  
PLAN OF REORGANIZATION PROPOSED BY DEBTOR  
TK SERVICES, INC., DATED JULY 8, 2016**

**THIS IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF THE PLAN. ACCEPTANCES OR REJECTIONS MAY NOT BE SOLICITED UNTIL THIS DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT. THIS DISCLOSURE STATEMENT IS BEING SUBMITTED FOR APPROVAL, BUT HAS NOT BEEN APPROVED BY THE BANKRUPTCY COURT. THE INFORMATION IN THIS DISCLOSURE STATEMENT IS SUBJECT TO CHANGE. THIS DISCLOSURE STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

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**IMPORTANT INFORMATION FOR YOU TO READ**

This Disclosure Statement is provided pursuant to section 1125 of the Bankruptcy Code to all of Debtor TK Services, Inc.'s known creditors, interest holders, and other parties in interest. The purpose of this Disclosure Statement is to provide such information as will enable a hypothetical, reasonable investor typical of the holders of Claims or Interests to make an informed judgment in exercising his, her, or its right either to accept or reject the First Amended Plan of Reorganization Proposed by Debtor TK Services, Inc. Dated July 8, 2016 (the "Plan").<sup>1</sup> A copy of the Plan is attached to this Disclosure Statement as Exhibit A and is incorporated herein by reference.

Debtor TK Services, Inc. (the "Debtor") believes that the Plan is in the best interests of creditors, maximizes the value of the Debtor's Assets and Litigation Claims, and will result in a greater return to creditors than any other alternative. As a result, the Debtor urges all creditors entitled to vote on the Plan to vote to accept the Plan. To be counted, your ballot must be completed, executed, and received by the deadline established in the Order by the Bankruptcy Court concerning solicitation of the Plan and Disclosure Statement submitted herewith (the "Voting Deadline"), unless extended in writing by the Debtor. Ballots may be submitted by e-mail, fax, first-class mail, overnight mail, or hand delivery. Ballots should be submitted to:

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This Disclosure Statement and the exhibits attached hereto are the only documents to be used in connection with the solicitation of votes on the Plan. No person is authorized by the Debtor in connection with the Plan or the solicitation of acceptances of the Plan to give any information or to make any representation other than as contained in this Disclosure Statement and the exhibits attached hereto or incorporated by reference or referred to herein. If given or made, such information or representation may not be relied upon as having been authorized by the Debtor and should not be relied upon by you in reaching your decision as to how to vote. Holders of Claims and Interests may wish to consult with counsel before voting on the Plan.

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<sup>1</sup> All capitalized terms used in this Disclosure Statement and not otherwise defined herein shall have the meanings given to them in the Plan.

**ALL CREDITORS ENTITLED TO VOTE ON THE PLAN ARE ENCOURAGED TO READ AND CAREFULLY CONSIDER THIS ENTIRE DISCLOSURE STATEMENT, INCLUDING THE PLAN ATTACHED AS EXHIBIT A, PRIOR TO VOTING ON IT.**

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This Disclosure Statement contains forward-looking statements with respect to the Plan. Forward-looking statements discuss matters that are not historical facts. Because they discuss future events or conditions, forward-looking statements often include words such as “anticipate,” “believe,” “estimate,” “expect,” “intend,” “plan,” “project,” “target,” “can,” “could,” “may,” “should,” “will,” “would” or similar expressions. Forward-looking statements should not be unduly relied upon. They indicate the Debtor’s expectations about the future and are not guarantees. Forward-looking statements speak only as of the date they are made and the Debtor has no obligation to update them to reflect changes that occur after the date they are made. There are several factors which could cause results to differ significantly from expectations. For examples of such factors refer to Article XIII of the Disclosure Statement.

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**This Disclosure Statement has been prepared in accordance with section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016, and not necessarily in accordance with federal or state securities laws or other non-bankruptcy laws. This Disclosure Statement has not been approved or disapproved by the United States Securities and Exchange Commission (the “SEC”), any state securities commission, or any securities exchange or association, nor has the SEC, any state securities commission, or any securities exchange or association passed upon the accuracy or adequacy of the statements contained herein.**

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The Bankruptcy Court’s approval of the Disclosure Statement in no way constitutes an endorsement of the Plan by the Bankruptcy Court or a guarantee of the accuracy or completeness of the information. The Debtor and the Debtor’s counsel have attempted to make the Disclosure Statement as accurate as reasonably possible and to meet the requirements of section 1125 of the Bankruptcy Code regarding disclosure.

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## **Article I INTRODUCTION**

The Debtor, as the proponent of the Plan, submits this Disclosure Statement pursuant to section 1125 of the Bankruptcy Code and Bankruptcy Rule 3016, in connection with the solicitation of votes on the Plan. A copy of the Plan is attached as **Exhibit A** to this Disclosure Statement.

The Disclosure Statement sets forth certain information regarding the Debtor's history, operations, assets, liabilities, events that led to the commencement of the Bankruptcy Case, events that occurred during the Bankruptcy Case, and the reorganization of the Debtor's affairs proposed by the Plan.

The Disclosure Statement also describes the terms and provisions of the Plan, including the proposed treatment of Claims and Interests under the Plan.

## **Article I SUMMARY OF THE PLAN**

The purpose of the Plan is to reorganize the Debtor in order to maximize the value of the Debtor's Assets, including the Litigation Claims, and thereby maximize distributions to Holders of Allowed Claims.

The Debtor has two primary assets or categories of assets. First, the Debtor is a party to seven (7) existing contracts pursuant to which it provides janitorial and other facilities management services to certain properties owned by the United States government or various agencies of the United States government (the "**Facilities Management Contracts**"). In addition to future revenues that the Debtor will receive under the Facilities Management Contracts, as of June 30, 2016, the Debtor has accounts receivable in the amount of approximately \$630,261.06 that are significantly more likely to be collected if the Debtor continues to perform under the existing Facilities Management Contracts. The Facilities Management Contracts are listed and described on **Exhibit B** to this Disclosure Statement. Second, the Debtor has Litigation Claims, including, without limitation, avoidance actions against insiders of the Debtor and avoidance actions against third parties.

The Debtor believes that the Plan maximizes the value of the existing Facilities Management Contracts by ensuring that the Debtor remains eligible to perform and financially capable of performing the existing Facilities Management Contracts to the end of their terms. By performing until the end of the terms of the Facilities Management Contract, the Debtor will preserve the value of existing receivables under the Facilities Management Contracts as well as future revenue under the same without the substantial impairment that would be caused if the Debtor ceased to be eligible to perform as a result of a change in control or the set-offs of fees and damages that would occur in the event that the Debtor ceased operations and liquidated. With respect to Litigation Claims, the Plan maximizes value by providing that an independent third party, the Plan Administrator, will have sole authority to investigate, assert, litigate, and settle such claims as well as to seek to subordinate or otherwise object to any Claims asserted by the persons or entities against which Litigation Claims may exist.

Distributions under the Plan will be made, on the terms more fully described herein and in the Plan, to Holders of Allowed Claims from (a) the New Value Contribution of Edward J. Kim, (b) payments received by the Debtor from the Facilities Management Contracts, cash generated from performance under the Facilities Management Contracts and any new contracts the Debtor may obtain, collection of accounts receivable, and generally from the Debtor's post-confirmation operations, and (c) recoveries, if any, made from the Litigation Claims available after the Allowed Administrative Claims of the Committee Professionals have been paid in full.

The Plan divides the Claims against and Equity Interests in the Debtor into five Classes. The following table summarizes the treatment for each class. The table also identifies which classes are entitled to vote on the Plan based on the Bankruptcy Code and indicates an estimated recovery for each Class, expressed as a percentage of the estimated, aggregate Allowed Claim(s) in such Class. Administrative Claims other than Professional Fee Claims will be paid in full in Cash to the extent such are Allowed on the later of the Effective Date or the date on which such Administrative Claims become Allowed Claims. The Professional Fee Claims of the Debtor's Counsel and of the Special Controller shall be paid in Cash in thirty-three (33) monthly installments, each installment in the amount of \$3,750, until both of those claims are paid in full.<sup>2</sup> The Professional Fee Claims of the Committee's Professionals shall be paid in Cash first from the recoveries made on account of the Litigation Claims, and thereafter, following full payment of the claims of the Debtor's counsel and Special Controller, in a combined payment of \$3,750 per month until the earlier of (i) seventy-two (72) months after the Effective Date, or (ii) when both of those claims have been paid in full. The recoveries described in the following table represent the Debtor's best estimate based on the information available at this time and certain assumptions described throughout this Disclosure Statement. Unless otherwise specified, the information in the following table is based on calculations as of June 30, 2016.

<b>Class</b>	<b>Description</b>	<b>Treatment</b>	<b>Entitled to Vote</b>	<b>Estimated Amount of Allowed Claims</b>	<b>Estimated Percentage Recovery</b>
Not Classified	Administrative Claims Other than Professional Fee Claims	Unimpaired. Payment in full, in Cash, of the Allowed amount of such claim (or as otherwise agreed) on the later of the Effective Date or the date on which such Administrative Claim becomes an Allowed Claim.	No	\$0 <sup>3</sup>	100%

<sup>2</sup> The allocation of those installments will be in proportion to the amount of each of the Debtor's Counsel's and Special Controller's Allowed Professional Fee Claims.

<sup>3</sup> Except for Allowed Professional Fee Claims, the Debtor does not anticipate having any Allowed Administrative Claims.



Not Classified	Professional Fee Claims of Debtor's Counsel and Special Controller	The Professional Fees Claims of the Debtor's counsel and the Special Controller shall be paid in Cash through 33 monthly installments, each installment in the combined amount of \$3,750.	No	\$125,000	100%
Not Classified	Professional Fee Claims of the Committee's Professionals	The Professional Fees Claims of the Committee's Professionals shall be paid in Cash from the recoveries made on account of the Litigation Claims and, following payment of the Allowed Administrative expenses of Debtor's Counsel and the Special Controller, \$3,750.00 per month until the earlier of (i) payment of the Allowed Claims of the Committee Professionals in full, or (ii) 72 months following the Effective Date.	No	\$100,000	100%
Not Classified	Priority Tax Claims	Impaired. Holders of Priority Tax Claims shall be paid on the Effective Date or as otherwise agreed by the Holder of each Priority Tax Claim.	Yes	\$277,488.81	100%
1	Allowed Secured Claim of Congressional Bank	Impaired. The Class 1 Secured Claim of Congressional Bank shall be Allowed in the amount of \$785,566.00 and shall bear interest at the rate of 3.5% per interest. The difference between the Allowed Amount of the Class 1 Secured Claim of Congressional Bank and the amount of \$1,057,540.88 shall be treated as a Class 4(a) General Unsecured Claim. Beginning on the Effective Date Congressional Bank will receive Cash Distributions through seventy-two (72) monthly installment payments, each installment payment being in the amount of \$12,285.50, inclusive of interest at the rate of 3.5% per annum, on account of its Allowed Class 1 Secured Claim. Installment payments shall be made on or before the 1st day of each month. Notwithstanding anything to the contrary in the Plan, Congressional Bank shall	Yes	\$1,057,540.88	69%

		retain its Lien(s) on all Assets securing its Allowed Claims. Repayment of the Allowed Secured Claim of Congressional Bank will be documented by amended and restated Loan Documents, which shall be consistent with the repayment terms set forth herein but will contain additional terms, including terms relating to financial covenants, financial reporting, and remedies upon default. In addition, such amended and restated loan documents shall contain a release of Congressional Bank in a form reasonably satisfactory to Debtor and Congressional Bank.			
2	Allowed Secured Claims of Ally Bank	Impaired. Beginning on the Effective Date and thereafter, Debtor shall continue making monthly payments on each of the two secured loans as required under the October 27, 2014 consent order until each such obligation is paid in full. In the event that the Debtor fails for any reason to comply with the applicable payment terms, Ally Bank shall be entitled to receive the vehicles securing its claims in full satisfaction of its Class 2 Allowed Secured Claims.	Yes	2010 Chevy-\$628.89 per month until paid in full; 2012 Cadillac-\$1,261.81 per month until paid in full	100%
3	Priority Benefit Claims	Impaired. Priority Benefits Claimants shall receive payment of 100% of their claims and interest thereon at .5% in 72 equal monthly payments of \$6,225.86.	Yes	\$440,520.56	100%
4(a)	General Unsecured Claims	Impaired. Holders of Class 4(a) General Unsecured Claims shall receive a Cash Distribution in the amount by which the recovery from the Litigation Claims exceeds the unpaid amount of the Allowed Professional Fee Claims of the Committee Professionals.	Yes	\$3,961,938	0-3%
4(b)	Insider Unsecured Claims	Impaired. Holders of Class 4(b) Insider Unsecured Claims shall	Yes	\$429,750	0%

		receive a Cash Distribution from any excess proceeds from the Litigation Claims after the payment in full of the holders of Class 4(a) claims.			
5	Equity Interests	Impaired. Edward J. Kim, Debtor's sole shareholder, shall retain his interest in the Debtor and receive other consideration as a result of his New Value Payment in the amount of \$204,000.	No	N/A	N/A

ALTHOUGH THE DEBTOR BELIEVES THAT ITS ESTIMATION OF CLAIMS AND RECOVERIES IS REASONABLE, THERE IS NO ASSURANCE THAT THE ACTUAL AMOUNT OF ALLOWED CLAIMS IN EACH CLASS WILL NOT EXCEED THE ESTIMATED AGGREGATE AMOUNTS SHOWN HEREIN. THE ACTUAL RECOVERIES UNDER THE PLAN WILL BE DEPENDENT UPON A VARIETY OF FACTORS INCLUDING, BUT NOT LIMITED TO, WHETHER, AND IN WHAT AMOUNT, CLAIMS ASSERTED BY PRIORITY BENEFITS ARE DEEMED TO BE ALLOWED PRIORITY CLAIMS. FURTHER, LITIGATION IS INHERENTLY UNCERTAIN AND, THUS, ANY ASSUMPTIONS CONCERNING PROSPECTIVE RECOVERY AMOUNTS MAY PROVE INCORRECT OR, EVEN IF CORRECT, THE TARGETS OF THE LITIGATION CLAIMS MAY BE JUDGMENT PROOF. ACCORDINGLY, NO REPRESENTATION CAN BE OR IS BEING MADE WITH RESPECT TO WHETHER EACH ESTIMATED RECOVERY SHOWN IN THE TABLE ABOVE WILL BE REALIZED BY THE HOLDER OF AN ALLOWED CLAIM IN ANY PARTICULAR CLASS.

## Article II - BACKGROUND AND EVENTS PRECIPITATING THE CHAPTER 11 FILING

### A. Description of the Debtor, the Debtor's Business, and the Debtor's Assets

The Debtor is a Virginia corporation whose principal business is contracting with the United States government to provide janitorial and other facilities management services at various federally owned buildings. The Debtor obtained most of its existing Facilities Management Contracts as a participant in the Small Business Administration's 8(a) Business Development Program (the "8(a) Program"). That program permits certain businesses owned and controlled by individuals deemed to be 'socially and economically disadvantaged' to obtain contracts without full competition in order to get a foothold in government contracting. A contractor's participation in the 8(a) Program is completed upon the contractor's reaching certain revenue caps. Upon such a completion, the contractor is said to have "graduated" from the 8(a) Program. Prior to the Petition Date, the Debtor graduated from the 8(a) Program, making it ineligible for the preferred treatment in bidding on United States government contracts that the 8(a) Program affords. However, the Debtor generally remains eligible to obtain new janitorial and facilities management contracts from the United States government or any other entity as

well as to continue performing under its previously awarded but still existing “8(a)” Facilities Management Contracts with the United States government until the end of the term of those existing contracts.<sup>4</sup>

The Debtor maintains its headquarters at 1000 Bernard Street, Alexandria, VA, 22314. The Debtor also maintains a physical presence at the performance site of most of its Facilities Management Contracts.

Edward J. Kim is the Debtor’s sole shareholder and President. Edward J. Kim’s father, Byong (James) Kim is the Debtor’s Chief Operating Officer.<sup>5</sup> James Kim is sixty-eight years of age and has been in the facilities management business for forty-three years. Prior to his employment with the Debtor, James Kim was, for twenty years the owner and President of Permanent Solutions, Inc (“PSI”), an entity which had also engaged in the facilities management business and had participated in and graduated from the 8(a) Program. Before starting PSI, James Kim had worked for eighteen years for Charles E. Smith & Company in the facilities management department, rising to Vice President in Charge of Facilities Management.

## **B. Events Leading Up to the Bankruptcy Case**

The Debtor began operating in 1999, and received approval to participate in the 8(a) Program in October 2002. The Debtor had total revenues of approximately \$22,000,000 in 2012; however, total revenues decreased to approximately \$13,000,000 in 2013, approximately \$8,236,000 in 2014,<sup>6</sup> and approximately \$8,222,000 in 2015. This precipitous decline in revenues between 2012 and 2014 resulted from a combination of the Debtor graduating from the 8(a) Program as well as the loss of two major contracts, specifically: (a) the loss in 2012 of a contract to provide janitorial and other facilities management services at Fort Belvoir in 2012 (the “Fort Belvoir Contract”) and (b) the loss in 2013 of a contract to provide janitorial and other facilities management services at the Internal Revenue Services’ facility in New Carrollton, Maryland.

Beginning with the loss of the Fort Belvoir Contract in 2012, the Debtor began experiencing financial difficulty. In February, 2014, Systems Integration Management, Inc. obtained a partial judgment against the Debtor in the amount of \$171,000, and, thereafter obtained a judicial attachment on the Debtor’s assets. Shortly thereafter, the Debtor commenced the Bankruptcy Case.

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<sup>4</sup> Provided that the Debtor remains qualified to receive 8(a) contracts in all respects other than having met the revenue caps.

<sup>5</sup> Prior to the filing of this bankruptcy case, James Kim managed the Debtor’s day to day operations under a management contract between PSI and the Debtor.

<sup>6</sup> Including both pre and post-petition.

### **C. The Debtor's Operations Post-Petition**

As of the Petition Date, the Debtor had approximately 91 employees. As of July 1, 2016, Debtor had approximately 77 employees. Since the Petition Date, the Debtor has operated at a 3.7% profit on an accrual basis generating \$657,441 in net income on \$17,678,943 in revenue through April 2016. Cash-based Monthly Operating Reports indicate that the company has seen a net reduction in income on a cash basis of just over \$15,000. This cash loss has occurred because of an aggressive payment schedule on secured debt as well as because of unwarranted delays in collecting government receivables owed to the Debtor of nearly \$150,000. The Debtor's average monthly gross revenue has been in excess of \$600,000 post-petition; however, revenue is projected to decline to \$550,000 per month during 2016 as some existing Facilities Management Contracts have ended or will end during 2016. The Debtor's analysis of its operations on a cash basis as summarized in monthly operating reports is attached hereto as Exhibit D, and the Debtor's comparative analysis of its profit and loss on an accrual basis by year is attached hereto as Exhibit E.

The Debtor believes that lack of available credit and perceived financial stability resulting from the pending Bankruptcy Case has hampered the Debtor's business development efforts since the Petition Date, and that confirmation of the Plan combined with the Debtor exiting bankruptcy will provide the Debtor with opportunities to both refinance its secured debt and allow the Debtor to successfully bid for new contracts.

### **D. The Debtor's Indebtedness to Congressional Bank**

On May 16, 2012, the Debtor and Congressional Bank executed and delivered a Business Loan Agreement setting out the terms and conditions of a revolving loan to be made by Congressional Bank to the Debtor. On the same day, the Debtor executed and delivered a Promissory Note in favor of Congressional Bank to evidence a revolving loan (the "Revolving Loan") that Congressional Bank concurrently made to the Debtor in the original principal amount of \$2,000,000.00, which was subsequently decreased to the principal amount of \$1,750,000.00 by a Change in Terms Agreement dated October 17, 2013 (as amended, restated, and modified from time to time, "Note 1").

On October 17, 2013, the Debtor and Congressional Bank executed a second Business Loan Agreement, in connection with which the Debtor executed a second Promissory Note in favor of Congressional Bank to evidence a term loan (the "Term Loan") the Bank concurrently made to the Debtor in the original principal amount of \$200,000.00 (as amended, restated, and modified from time to time, "Note 2" and together with Note 1, the "Notes").

To secure the obligations evidenced by Note 1 and Note 2, the Debtor granted Congressional Bank security interests in all of its property, as evidenced by a Commercial Security Agreement dated May 16, 2012 and a second Commercial Security Agreement dated October 17, 2013 (collectively as amended, restated, and modified from time to time, the "Security Agreements," and collectively with Note 1 and Note 2, the "Loan Documents").

Pursuant to the Security Agreements, Congressional Bank's security interests attached to, inter alia, all inventory, equipment, cash, deposit accounts, investment property, accounts, chattel paper, instruments, any other rights to payment, and all proceeds thereof. Moreover, pursuant to an after-acquired property clause, the security interests attach to each type of collateral indicated "now owned or hereafter acquired." The perfection of Congressional Bank's security interests in the Debtor's assets (except for certain titled motor vehicles, which are subject to liens in favor of Ally Bank) is evidenced by that certain UCC Financing Statement filed on May 23, 2012 with the Virginia State Corporation Commission as Document Number 12-05-23-3944-6.

As of the Petition Date, the amount of at least \$1,926,767.31 was owed to Congressional Bank pursuant to the Loan Documents. As of June 30, 2016, the amount owed to Congressional Bank had decreased to \$1,057,540.88 because of payments made to Congressional Bank during the Bankruptcy Case pursuant to the cash collateral orders entered in the case.

**E. Other Claims Against the Debtor**

The unsecured claims, unsecured priority claims, and secured claims asserted against the Debtor are summarized in Exhibits F, G, & H, attached hereto.

**Article III - SIGNIFICANT EVENTS DURING THE BANKRUPTCY CASE**

**A. Commencement of the Bankruptcy Case**

On March 23, 2014 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to manage its Assets and business as a debtor-in-possession. No trustee or examiner has been appointed in the Bankruptcy Case; however, as discussed below, an Official Committee of Unsecured Creditors and a Special Controller have been appointed in the Debtor's Bankruptcy Case.

**B. The Official Committee of Unsecured Creditors**

On May 15, 2014, the United States Trustee appointed an Official Committee of Unsecured Creditors (the "Committee") in the Bankruptcy Case consisting of three members: (1) Systems Integration & Management, Inc., (2) Leonard Paper Company; and (3) Barclay Water Management. Pursuant to an Order entered on July 16, 2014, the Bankruptcy Court approved the employment of LeClairRyan, a Professional Corporation, as counsel to the Committee. Further, pursuant to an Order entered on July 16, 2014, the Bankruptcy Court approved the employment of National CRS, LLC as financial advisors to the Committee.

**C. The United States Trustee's Motion to Dismiss and the Appointment of a Special Controller**

Prior to the Petition Date, the Debtor's financial management and reporting as well as its accounting processes, controls, and reporting were unsatisfactory and contributed significantly to

the Debtor's business and financial difficulties. These deficiencies initially continued after the Petition Date and resulted in the unauthorized postpetition payment of the amount of \$55,000 to Continental Solutions, Inc. a subcontractor owned by Shin Kim, the brother of James Kim (and the uncle of Edward Kim) for amounts owed on account, primarily, of services provided prior to the Petition Date.

On April 3, 2014, the United States Trustee filed a Motion to Dismiss Case or, in the Alternative, Appoint a Chapter 11 Trustee (the "Motion to Dismiss"). In the Motion to Dismiss, the United States Trustee alleged, among other things, that certain of the Debtor's insurance policies had lapsed and that the Debtor had failed to provide certain documents requested by the United States Trustee. The Debtor, Congressional Bank, and one trade creditor of the Debtor objected to the Motion to Dismiss. The Debtor argued, among other things, that the appointment of a chapter 11 trustee might irreparably harm the Debtor because such appointment might constitute a change in control such that the Debtor would lose its eligibility to perform under the existing Facilities Management Contracts and might affect the Debtor's security clearance.

While the Motion to Dismiss ultimately was denied, with the support of Congressional Bank, the Debtor sought and obtained the appointment of William Arnold of Arnold Financial Consulting, LLC d/b/a Marcher Consulting, LLC (the "Special Controller") as special controller for the Debtor. Pursuant to the Bankruptcy Court's order appointing the Special Controller (Dkt. No. 217, the "Special Controller Order"), the Special Controller was vested with, among other things, (1) complete control over the Debtor's books, financial records, and bank accounts, (2) final review and approval authority with respect to all financial reports, (3) sole signatory authority and powers on all of the Debtor's financial accounts except for debit card payments of ordinary and necessary business expenses in the amount of \$2,000 or less, and (4) complete supervisory power and control over the Debtor's accounting employees. The Special Controller also was required to report any post-petition financial impropriety by the Debtor if the Debtor failed to take corrective action as requested by the Special Controller.

The Special Controller has imposed discipline in Debtor's spending of estate revenues and has brought order and clarity to the Debtor's financial reporting and accounting records. Furthermore, the Special Controller's performance has earned the confidence of all stakeholders in the Bankruptcy Case, ensured the accuracy of the Debtor's financial reporting, and ensured the integrity of the Debtor's expenditure decisions.

A condition of the Plan is that the Reorganized Debtor continue to retain the Special Controller, both to serve all of the functions established under the Special Controller Order from the Effective Date through and including date on which the Plan is fully administered and all distributions required by the Plan are made and to serve as Plan Administrator.

The Plan Administrator shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code, and shall have all the powers, authority and responsibilities of a Trustee specified in sections 704 and 1106 of the Bankruptcy Code, without the requirement of posting a bond and subject to the provisions of this Plan. In the event of a

conflict between any provision of any corporate document or instrument of the Reorganized Debtor and any term or provision of this Plan of Reorganization, the terms of this Plan shall prevail.

#### **D. Cash Collateral Orders**

The Debtor and Congressional Bank entered into a series of consensual orders governing the use of Cash Collateral and in which the Debtor stipulated to, among other things, the amount of the indebtedness owed to Congressional Bank as of the Petition Date, the validity of Congressional Bank's Lien(s), and the validity of the Loan Documents. These orders, ultimately with the consent of the Committee, also established a deadline of June 2, 2014, for creditors and parties in interest (other than the Debtor but including the Committee) to object to the validity of Congressional Bank's Lien(s). No such objection was filed.

The cash collateral orders also effectively granted the Committee Professionals a first lien on the proceeds of any and all avoidance actions brought by the Debtor.

#### **E. Avoidance Actions**

##### **1. Insider Transfers.**

During the two year period preceding the filing of the Bankruptcy Case, the Debtor made a number of payments to insiders totaling over \$5,600,000. Under various cash collateral orders entered by the Bankruptcy Court, the proceeds of avoidance claims against insiders are to be set aside for the payment of Allowed Professional Fees of the Committee's professionals. Committee counsel, who has been responsible for prosecuting these claims, has obtained executed agreements from all potential insider preference defendants tolling the statute of limitations pursuant to, and in accordance with, tolling agreements entered into with the potential insider preference defendants. After the Effective Date, the Plan Administrator will be responsible for pursuing the avoidance claims against insiders of the Debtor.

These claims will be preserved and remain the property of the Reorganized Debtor subject to the security interest of the Committee's Professionals. These claims include but are not limited to claims against Permanent Solutions Industries, Inc., James Kim a/k/a Byong Kim, Kim Family's First, LLC, Kim Family's Second, LLC, Joseph Kim a/k/a Teddy Kim, H&K Building Services, Inc., Jeong Leem Kim, 410-420 Calvert, LLC, Continental TK Services, Inc., Janet Kim, Mason Social, LLC, Oglesby Management, LLC, TK Mason, LLC, TK Calver Street, LLC, Oakville Logistics and Storage, LLC, 4525 Old Dominion, LLC, TLC Group, and PSI Webware, Inc. for fraudulent transfers under the Bankruptcy Code and Virginia State Law, preferential transfers, disallowance of claims, breach of fiduciary duty, gross negligence, waste and diversion of assets, alter ego, piercing the corporate veil, civil conspiracy, accounting, and prejudgment interest.

Any recoveries from Insider Claims will be used first to pay Professional Fee Claims of the Committee, second Pro Rata to general unsecured creditors on account of their Allowed



Unsecured Claims, and, third to insider unsecured creditors on account of their Allowed Unsecured Claims.

## 2. Other Transfers

The Debtor made a number of transfers to other parties during the ninety day period prior to this bankruptcy filing. The Debtor has filed seven preference lawsuits seeking to recover the aggregate amount of \$603,144. To date, counsel to the Debtor has been prosecuting these claims. The following table sets forth the status of each of the seven non-insider preference claims:

Defendant	Adv Case #	Amount Demanded	Status	Disposition
Systems Integration Management, Inc.	14-01166	\$134,202 plus voiding of prejudgment attachment	Settled for \$60,000	Paid and Dismissed; Committee Counsel paid
Palm National Partners, LLC	15-01168	\$102,628 plus voiding of all of Defendant's purported lien interests in Debtor's personal property	Trial Scheduled for 7/29/16	Pending
WEX Bank, <i>et al.</i>	16-01046	\$73,495	Settlement Agreement for \$1,126	Pending
Michael Ferrante	16-01047	\$11,250	Settlement Agreement for \$4,500	Pending
American Express Travel Related Services Company, Inc.	16-01048	\$41,326	Answer filed	Pending
American Express Bank,	16-01049	\$21,598	Answer filed	Pending

FSB				
American Express Travel Related Services Company, Inc, <i>et al.</i>	16-01050	\$218,645	Answer filed	Pending

Debtor's best estimate of the total future recovery from all the pending avoidance actions is between \$75,000 and \$190,000.

#### **Article IV - THE PLAN**

##### **A. General**

THE FOLLOWING SUMMARY HIGHLIGHTS CERTAIN OF THE SUBSTANTIVE PROVISIONS OF THE PLAN, AND IS NOT, NOR IS IT INTENDED TO BE, A COMPLETE DESCRIPTION OR A SUBSTITUTE FOR A FULL AND COMPLETE REVIEW OF THE PLAN. THE DEBTOR ENCOURAGES ALL HOLDERS OF CLAIMS AND EQUITY INTERESTS TO READ AND STUDY CAREFULLY THE PLAN, A COPY OF WHICH IS ATTACHED HERETO AS **EXHIBIT A**.

Section 1123 of the Bankruptcy Code provides that, except for Administrative Claims and Priority Tax Claims, a plan of liquidation must categorize claims against and equity interests in a debtor into individual classes. Although the Bankruptcy Code gives the Debtor significant flexibility in classifying claims and interests, section 1122 of the Bankruptcy Code dictates that a plan of liquidation may only place a claim or an equity interest into a class containing claims or equity interests that are substantially similar.

The Plan creates six Classes of Claims and one Class of Equity Interests. These Classes take into account the differing nature and priority of Claims against and Equity Interests in the Debtor. Administrative Claims, Professional Fee Claims, and Priority Tax Claims are not classified for purposes of voting or receiving Distributions under the Plan (as is permitted by section 1123(a)(1) of the Bankruptcy Code), but are treated separately as unclassified Claims.

The Plan provides specific treatment for each Class of Claims and Equity Interests. Only Holders of Claims that are Impaired under the Plan, and who will receive Distributions under the Plan are entitled to vote on the Plan.

Unless otherwise provided in the Plan or the Confirmation Order, the treatment of any Claim or Equity Interest under the Plan will be in full satisfaction, settlement, release and discharge of, and in exchange for, such claim or Equity Interest.

The following discussion sets forth the classification and treatment of all Claims against, or Equity Interests in, the Debtor. It is qualified in its entirety by the terms of the Plan, which is

attached hereto as **Exhibit A**, and which should be read carefully by you in considering whether to vote to accept or reject the Plan.

**B. Classification and Treatment of Claims and Equity Interests**

If the Plan is confirmed by the Bankruptcy Court, (a) each Allowed Claim in a particular Class will receive the same treatment as the other Allowed Claims in such Class, whether or not the Holder of such Claim voted to accept the Plan, and (b) each Allowed Equity Interest in a particular Class will receive the same treatment as the other Allowed Equity Interests in such Class. Such treatment will be in exchange for and in full satisfaction, release, and discharge of, the Holder's respective Claims against or Equity Interests in a Debtor, except as otherwise provided in the Plan. Moreover, upon Confirmation, the Plan will be binding on (a) all Holders of a Claim regardless of whether such Holders voted to accept the Plan, and (b) all Holders of an Equity Interest.

**1. Unclassified Claims**

**a. Administrative Claims (Other Than Professional Fee Claims)**

Except to the extent the Holder of an Allowed Administrative Claim (other than Professional Fee Claims) agrees otherwise, each Holder of an Allowed Administrative Claim (other than Holders of Professional Fee Claims) shall be paid in respect of such Allowed Claim the full amount thereof, without interest, in Cash, as soon as practicable after the later of (i) the Effective Date or (ii) the date on which such Claim becomes an Allowed Claim.

**b. Payment of Professional Fee Claims**

The Professional Fees Claims of the Debtor's counsel and the Special Controller shall be paid in Cash through 33 monthly installments, each installment in the combined amount of \$3,750. The Professional Fees Claims of the Committee's Professionals shall be paid in Cash from the recoveries made on account of the Litigation Claims and, following payment of the Allowed Administrative expenses of Debtor's Counsel and the Special Controller, \$3,750.00 per month until the earlier of (i) payment of the Allowed Claims of the Committee Professionals in full, or (ii) 72 months following the Effective Date. All applications for allowance of a Professional Fee Claim for services rendered and costs incurred through the Confirmation Date must be Filed with the Bankruptcy Court and served on counsel for the Debtor, the Plan Administrator, and on the Office of the United States Trustee no later than forty-five (45) calendar days after the Effective Date or such Professional Fee Claim shall be forever barred and shall not be enforceable against the Debtor, the Estate, the Plan Administrator, the Assets, or the Cash.

**c. Priority Tax Claims**

Holders of Priority Tax Claims shall be paid on the Effective Date or as otherwise agreed by the Holder of each Priority Tax Claim. Holders of Allowed Priority Tax Claims shall not be entitled to receive any payment on account of any penalty (other than a penalty of the type

specified in section 507(a)(8)(G) of the Bankruptcy Code) arising with respect to, or in connection with such Claims. Any such Claim, or demand for any such penalty (other than a penalty of the type specified in section 507(a)(8)(G) of the Bankruptcy Code), shall be deemed disallowed by confirmation of the Plan.

**2. Classified Claims and Equity Interests**

**a. Class 1: Secured Claim of Congressional Bank**

**i. Impairment and Voting**

Class 1 consists of the Secured Claim of Congressional Bank. Class 1 is Impaired, and Congressional Bank is entitled to vote to accept or reject the Plan.

**ii. Treatment**

The Class 1 Secured Claim of Congressional Bank shall be Allowed in the amount of \$785,566.00 and shall bear interest at the rate of 3.5% per interest. The difference between the Allowed Amount of the Class 1 Secured Claim of Congressional Bank and the amount of \$1,057,540.88 shall be treated as a Class 4(a) General Unsecured Claim. Beginning on the Effective Date Congressional Bank will receive Cash Distributions through seventy-two (72) monthly installment payments, each installment payment being in the amount of \$12,285.50, inclusive of interest at the rate of 3.5% per annum, on account of its Allowed Class 1 Secured Claim. Installment payments shall be made on or before the 1st day of each month. Notwithstanding anything to the contrary in the Plan, Congressional Bank shall retain its Lien(s) on all Assets securing its Allowed Claims. Repayment of the Allowed Secured Claim of Congressional Bank will be documented by amended and restated Loan Documents, which shall be consistent with the repayment terms set forth herein but will contain additional terms, including terms relating to financial covenants, financial reporting, and remedies upon default. In addition, such amended and restated loan documents shall contain a release of Congressional Bank in a form reasonably satisfactory to Debtor and Congressional Bank.

**b. Class 2: Secured Claims of Ally Bank**

**i. Impairment and Voting**

Class 2 consists of the Allowed Secured Claims of Ally Bank. Class 2 is Impaired and the Holder of the Allowed Class 2 Secured Claims is entitled to vote to accept or reject the Plan.

**ii. Treatment**

Beginning on the Effective Date Ally Bank will receive its regularly scheduled monthly payments for the two remaining vehicles covered by Ally Bank's liens through their scheduled terms. In the event that the Debtor fails to make its regularly scheduled monthly payments, Ally Bank shall be entitled to receive the vehicles securing its claim in full satisfaction of its Class 2 Allowed Secured Claim.

**c. Class 3: Priority Benefit Claims**

**i. Impairment and Voting**

Class 3 consists of the Allowed Priority Benefit Claims. Class 3 is Impaired and the Holders of the Allowed Class 3 Priority Benefit Claims are entitled to vote to accept or reject the Plan.

**ii. Treatment**

Beginning on the Effective Date, to the extent such claims are Allowed Claims, Holders of Class 3 Priority Benefit Claims will receive Cash Distributions totaling the full Allowed amount of each claim plus interest at the rate of 0.5% per annum, through seventy-two (72) equal monthly installment payments, each installment payment being in the amount of \$6,225.86.

**d. Class 4(a): General Unsecured Claims**

**i. Impairment and Voting**

Class 4(a) consists of all non-insider General Unsecured Claims. Class 4(a) is Impaired and each Holder of an Allowed Class 4 General Unsecured Claim is entitled to vote to accept or reject the Plan.

**ii. Treatment**

Holders of Class 4(a) General Unsecured Claims will receive Cash Distributions under the Plan in any amount by which the recovery from Litigation Claims exceeds the unpaid Allowed Professional Fee Claims of the Committee Professionals.

**e. Class 4(b)- Insider Unsecured Claims**

**i. Impairment and Voting**

Class 4(b) consists of all Insider Unsecured Claims (the “Insider Unsecured Claims”).

**ii. Treatment**

Holders of Class 4(b) Insider Unsecured Claims shall receive a Cash Distribution from any excess proceeds from the Litigation Claims after the payment in full of the holders of Class 4(a) claims.

**f. Class 5 Claims—Equity Interests**

**i. Impairment and Voting**

Class 5 is Impaired.

**ii. Treatment**

Edward J. Kim is the 100% shareholder of the Debtor. The absolute priority rule of 11 U.S.C. § 1129(b) of the Bankruptcy Code states that this Class is not entitled to retain its equity interest in the Debtor unless either unsecured creditors receive payment in full, the unsecured creditors consent to the Plan, or the equity holders contribute new capital to the Debtor. In this case, unsecured creditors will not receive payment in full. Accordingly, the absolute priority rule of 11 U.S.C. § 1129(b) may be applicable. Absent higher or better bids being accepted, the current Equity Owner shall retain his 100% of the equity interests of the reorganized debtor by making a new value contribution to the Plan in the amount of \$204,000 (the “New Value Contribution”). The New Value Contribution will entitle the Equity Owner to (i) retain his equity interest in the reorganized debtor, (ii) receive a full and complete release from all claims that the Debtor has or had against the Equity Owner, and (iii) the Debtor’s immediate payment of the priority tax claim of the Internal Revenue Service.

The United State Supreme Court has held that contributions of new value for the purpose of obtaining equity in a debtor must be subject to competing bids from the open market. Therefore, anyone may purchase the equity interest of the reorganized debtor by submitting a higher bid for such interest. Any party desiring to offer a higher bid should submit such bid, in writing, along with evidence of his/her ability to satisfy such bid, to the undersigned counsel for the Debtor, by noon (EDT) at least ten (10) days prior to the confirmation hearing, and must appear at the confirmation hearing. The ability to bid and any subsequent auction of the equity interest will only take place in the event that all impaired classes do not accept the plan. The highest and best bid will be accepted by the Bankruptcy Court and the successful bidder will become the owner of the equity interest in the reorganized Debtor, and will purchase such equity interest subject to the terms of the plan confirmed by the Court. In the event that the equity interests of the existing member is purchased, the existing Equity Owner withdraws his proposed new value contributions.

**C. Treatment of Executory Contracts and Unexpired Leases**

On the Effective Date, all leases and executory contracts of the Debtor that have not been assumed, rejected, or assumed or assigned by separate order of the Bankruptcy Court shall be deemed assumed with a cure of \$0 in accordance with the provisions and requirements of sections 365 and 1123 of the Bankruptcy Code except that those contracts listed on the Schedule

to be filed by the Debtor at least fourteen (14) days prior to the confirmation hearing shall be deemed rejected as of the Confirmation Date.

**D. Conditions Precedent to Confirmation and the Effective Date of the Plan**

**1. Conditions to Confirmation**

The following are conditions precedent to Confirmation that must be satisfied or waived in accordance with Article IX.A.3 of the Plan:

- (a) The Bankruptcy Court shall have approved the Disclosure Statement, in a manner acceptable to the Debtor, as containing adequate information with respect to the Plan within the meaning of section 1125 of the Bankruptcy Code.
- (b) The proposed Confirmation Order shall be in form and substance reasonably acceptable to the Debtor.
- (c) The Plan and all of the schedules, documents, and exhibits contained therein shall be filed with the Bankruptcy Court in form and substance reasonably acceptable to the Debtor.

**2. Conditions to Occurrence of the Effective Date**

The following are conditions precedent to the occurrence of the Effective Date that must be satisfied or waived in accordance with Article IX.A.3 of the Plan:

- (a) The Confirmation Order shall be a Final Order.
- (b) No request for revocation of the Confirmation Order under section 1144 of the Bankruptcy Code has been made, or, if made, remains pending.
- (c) The appointment of the Plan Administrator shall have been confirmed by order of the Bankruptcy Court, which may be a term included in the Confirmation Order.
- (d) Payment of the New Value Contribution.

**3. Waiver of Conditions Precedent**

Notwithstanding the foregoing, but subject to section 1127 of the Bankruptcy Code, the Debtor reserves the right to waive the occurrence of any condition precedent to the Effective Date or to modify any of the foregoing conditions precedent. Any such written waiver of a condition precedent set forth in this Article may be effected at any time, without notice, without leave or order of the Bankruptcy Court, and without any formal action other than proceeding to consummate the Plan. Any actions required to be taken on the Effective Date shall take place

and shall be deemed to have occurred simultaneously, and no such action shall be deemed to have occurred before the taking of any other such action.

#### **4. Consequence of Non-Occurrence of Effective Date**

In the event the Effective Date does not timely occur, the Debtor reserves all rights to seek an order from the Bankruptcy Court directing that the Confirmation Order be vacated, that the Plan be null and void in all respects, and/or that any settlement of Claims provided for in the Plan be null and void.

#### **E. Retention of Jurisdiction by the Bankruptcy Code**

The Plan shall not in any way limit the Bankruptcy Court's post-confirmation jurisdiction as provided under the Bankruptcy Code. Pursuant to sections 105(a) and 1142 of the Bankruptcy Code, the Bankruptcy Court shall retain and have exclusive jurisdiction (to the extent granted by applicable law, including any provisions permitting mandatory or discretionary withdrawal of such jurisdiction) over any matter arising out of or related to the Bankruptcy Case and the Plan, including, without limitation, the following matters:

- (1) to hear and determine motions for (a) assumption or rejection or (b) assumption and assignment of executory contracts or unexpired leases to which a Debtor is a party or with respect to which a Debtor may be liable, and to hear and determine the allowance of Claims resulting therefrom including the amount of cure, if any, required to be paid;
- (2) to adjudicate any dispute over the ownership of a Claim or Equity Interest;
- (3) to adjudicate any dispute arising from or relating to the distribution or retention of consideration under the Plan;
- (4) to adjudicate any dispute involving the Plan Administrator;
- (5) to ensure that distributions to Holders of Allowed Claims are accomplished as provided herein;
- (6) to hear and determine any objection to the allowance or estimation of Claims filed, both before and after the Confirmation Date, including any objection to the classification of any Claim, and to allow or disallow any Claim, in whole or in part;
- (7) to enter and implement such orders as may be appropriate if the Confirmation Order is for any reason stayed, revoked, modified and/or vacated;
- (8) to issue orders in aid of execution, implementation or consummation of the Plan;
- (9) to hear and determine disputes arising in connection with the interpretation,



implementation, or enforcement of the Plan or the Confirmation Order including disputes arising under agreements, documents, or instruments executed in connection with the Plan;

- (10) to consider any modifications of the Plan, to cure any defect or omission or to reconcile any inconsistency in any order of the Bankruptcy Court, including without limitation the Confirmation Order;
- (11) to hear and determine all applications for allowance of compensation and reimbursement of Professional Fee Claims under the Plan or under sections 328, 330, 331, 503(b), 1103, and 1129(a)(4) of the Bankruptcy Code;
- (12) to hear and determine all motions requesting allowance of an Administrative Claim;
- (13) to determine requests for the payment of Claims entitled to priority under section 507(a)(2) of the Bankruptcy Code, including compensation and reimbursement of expenses of parties entitled thereto;
- (14) to hear and determine objections to Claims, the Litigation Claims, all Causes of Action, Avoidance Actions, and other suit and adversary proceedings to recover assets of the Debtor and property of the Estate, wherever located, and to adjudicate any other Causes of Action, Avoidance Actions, suits, adversary proceedings, motions, applications and contested matters that may be commenced or the Bankruptcy Case or the Plan, proceedings to adjudicate the allowance of Disputed Claims and all controversies and issues arising from or relating to any of the foregoing;
- (15) to hear and determine matters concerning state, local and federal taxes in accordance with sections 346, 505, and 1146 of the Bankruptcy Code;
- (16) to hear any other matter not inconsistent with the Bankruptcy Code;
- (17) to enter the Final Decree closing the Bankruptcy Case; and
- (18) to enforce all orders previously entered by the Bankruptcy Court.

## **F. Modification, Revocation, or Withdrawal of the Plan**

### **1. Modification and Amendments**

The Debtor may alter, amend or modify the Plan or any Exhibits thereto under section 1127(a) of the Bankruptcy Code at any time before entry of the Confirmation Order. After entry of the Confirmation Order, and before “substantial consummation” (as such term is defined in section 1101(2) of the Bankruptcy Code) of the Plan, the Debtor may, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or

omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the Confirmation Order, and such matters as may be necessary to carry out the purpose and effect of the Plan so long as such proceedings do not adversely affect the treatment of Holders of Claims under the Plan; *provided, however*, that prior notice of such proceedings shall be served in accordance with the Bankruptcy Rules or order of the Bankruptcy Court.

## **2. Effect of Confirmation on Modification**

Entry of a Confirmation Order shall mean that all modifications or amendments to the Plan (if any) since the solicitation thereof are approved pursuant to section 1127(a) of the Bankruptcy Code and do not require additional disclosure or resolicitation under Bankruptcy Rule 3019.

## **3. Revocation or Withdrawal of the Plan**

The Debtor reserves the right to revoke or withdraw the Plan, including the right to revoke or withdraw the Plan before the Confirmation Date. If the Debtor revokes or withdraws the Plan, or if Confirmation or Consummation does not occur, then the Plan shall be null and void in all respects. Unless Confirmed, nothing contained in the Plan shall: (i) constitute a waiver or release of any Claims or Interests; (ii) prejudice in any manner the rights of the Debtor; or (iii) constitute an admission, acknowledgement, offer, or undertaking of any sort by the Debtor.

## **G. Successors and Assigns**

The rights, duties, and obligations of any Person named or referred to in the Plan, including all Creditors, shall be binding on, and shall inure to the benefit of, the successors and assigns of such Person.

## **H. Reservation of Rights**

Except as expressly set forth herein, including with respect to votes cast on Ballots, the Plan shall have no force or effect unless and until the Bankruptcy Court enters the Confirmation Order. Neither the filing of the Plan, any statement or provision contained herein, nor the taking of any action by the Debtor or any other Person with respect to the Plan, shall be, or shall be deemed to be, an admission or waiver of any rights of: (a) the Debtor with respect to the Holders of Claims against the Debtor, or other Person; or (b) any Holder of a Claim, or other Person, before the Effective Date.

## **I. Payment of Statutory Fees**

All fees payable through the Effective Date pursuant to 28 U.S.C. § 1930 shall be paid on or before the Effective Date. All fees payable after the Effective Date pursuant to 28 U.S.C. § 1930 shall accrue until the Bankruptcy Case is closed, dismissed, or converted and shall be paid by the Plan Administrator out of the Assets of the Estate. The Debtor, through the Plan Administrator, shall file post-confirmation quarterly reports or any pre-confirmation monthly-

operating reports not filed as of the Confirmation Hearing in conformance with the U.S. Trustee Guidelines.

**J. Further Assurances**

The Debtor, the Plan Administrator, all Holders of Claims and Equity Interests receiving Distributions hereunder, and all other Entities shall, from time to time, prepare, execute and deliver any agreements or documents, and take any other actions as may be reasonably necessary or advisable to effectuate the provisions and intent of the Plan or the Confirmation Order.

**K. Resolution of Inconsistent or Conflicting Provisions**

In the event of an inconsistency between the Plan and the Disclosure Statement, the terms of the Plan shall control in all respects. In the event of any inconsistency between the Plan and the Confirmation Order, the Confirmation Order shall control.

**L. Filing of Additional Documents**

On or before substantial consummation of the Plan, the Debtor may file with the Bankruptcy Court such agreements or other documents as may be necessary or appropriate to effectuate and further evidence the terms and conditions of the Plan.

**M. Severability**

After the Effective Date, should the Bankruptcy Court, or any other court of competent jurisdiction, determine that any provision in the Plan is either illegal on its face or illegal as applied to any Claim, such provisions shall be unenforceable either as to all Holders of Claims or as to the Holder of such Claim as to which the provision is illegal, respectively. Such a determination of unenforceability shall in no way limit or affect the enforceability and operative effect of any other provision of the Plan.

**ARTICLE VI - MEANS OF IMPLEMENTATION OF THE PLAN**

**A. Sources for Plan Distributions**

The Plan shall be funded by (a) Cash held on the Effective Date, (b) payments made under the Facilities Management Contracts and from the Debtor's operations, (c) collection of accounts receivable, (d) the New Value Contribution; and (e) recoveries from the Litigation Claims, and (f) funds that may be generated from, among other things, the liquidation or other disposition of the Assets.

**B. Corporate Action and Authority**

On the Effective Date and automatically and without further action, (i) the Plan Administrator shall be deemed to have the sole and exclusive right to manage, operate, and govern the Debtor and its Assets. The Plan will be administered by the Plan Administrator, and

all actions taken thereunder in the name of the Debtor shall be taken through the Plan Administrator.

**C. Powers and Obligations of the Plan Administrator**

On and after the Effective Date, the Plan Administrator shall be responsible for implementing the Plan, pursuing, settling or abandoning all Causes of Action, resolving all Claims, and distributing Cash pursuant to the Plan. On the Effective Date, the Plan Administrator shall succeed to all of the rights of the Debtor with respect to the Assets necessary to implement the Plan and protect, conserve, and liquidate all Assets, including, without limitation, control over (including the right to waive) all attorney-client privileges, work-product privileges, accountant-client privileges, and any other evidentiary privileges relating to the Assets that, before the Effective Date, belonged to the Debtor pursuant to applicable law. The Plan Administrator shall be compensated at his/her standard hourly rates, as such may be adjusted from time to time, without further order of the Bankruptcy Court. The Plan Administrator shall serve without bond, but subject to supervision and control of the Bankruptcy Court. The Plan Administrator shall be deemed the Estate's representative in accordance with section 1123 of the Bankruptcy Code, and shall have all the powers, authority and responsibilities of a Trustee specified in sections 704 and 1106 of the Bankruptcy Code, subject to the terms, requirements, and mandates of the Plan. Without limiting the foregoing, the powers and duties of the Plan Administrator shall include all of the following:

- (1) to engage attorneys, accountants, consultants, agents, and other professional persons to assist the Plan Administrator with respect to the Plan Administrator's responsibilities under the Plan;
- (2) to pay the fees and expenses for the attorneys, consultants, agents, and professionals engaged by the Plan Administrator, and to pay all other expenses in connection with administering the Plan and winding down the affairs of the Debtor without further order of the Court;
- (3) to bring, prosecute, litigate, and, subject to Bankruptcy Court approval of any proposed settlement after notice and a hearing, compromise or settle Litigation Claims.
- (4) to object to Claims, seek to subordinate Claims, and, subject to Bankruptcy Court approval of any proposed settlement after notice and a hearing, compromise or settle any Claims.
- (5) to distribute Cash or other Assets in accordance with the provisions of the Plan;
- (6) establish and maintain such bank accounts as the Plan Administrator may deem advisable on behalf of the Liquidated Debtor
- (7) to execute and deliver all documents, and take all actions, necessary to consummate the Plan;

- (8) to take action to wind down and terminate the corporate existence of the Debtor, if the Plan Administrator determines so doing is advisable; and
- (9) to take any and all other actions necessary, advisable, or appropriate, in the reasonable discretion of the Plan Administrator, to implement, enforce, or effectuate the Plan, without further order of the Bankruptcy Court.

**D. Preservation of Litigation Claims**

From and after the Effective Date, the Plan Administrator shall have the sole and exclusive right to commence, litigate or settle any avoidance, recovery or subordination actions under sections 502, 510, 522(f), 522(h), 542, 543, 544, 545, 547, 548, 549, 550, 551, 553, or 724 of the Bankruptcy Code or any other Litigation Claims or rights to payments or claims that belong to the Estate, the Debtor, or the Liquidated Debtor, after the Effective Date. Pursuant to section 1123(b)(3)(B) of the Bankruptcy Code, no other Person may pursue any such Litigation Claims.

**E. Exemption from Certain Transfer Taxes and Recording Fees**

Pursuant to section 1146 of the Bankruptcy Code, (a) the issuance, transfer, or exchange of any securities, instruments, or documents, (b) the creation of any Lien, mortgage, deed of trust, or other security interest, (c) the making or assignment of any lease or sublease or the making or delivery of any deed or other instrument of transfer under, pursuant to, in furtherance of, or in connection with the Plan, including, without limitation, any deeds, bills of sale, or assignments executed in connection with any of the transactions contemplated under the Plan or the transfer or sale of any real or personal property of the Estate or the Debtor pursuant to, in implementation of, or as contemplated in the Plan, and (d) the issuance, renewal, modification, or securing of indebtedness by such means, and the making, delivery, or recording of any deed or other instrument of transfer under, in furtherance of, or in connection with, the Plan, including, without limitation, the Confirmation Order, shall not be subject to any document recording tax, stamp tax, conveyance fee, or other similar tax, mortgage tax, real estate transfer tax, mortgage recording tax, or other similar tax or governmental assessment. Consistent with the foregoing, and in accordance with the Plan, each recorder of deeds or similar official for any county, city, or governmental unit in which any instrument hereunder is to be recorded shall, pursuant to the Confirmation Order, be ordered and directed to accept such instrument, including, without limitation any deed or other instrument transferring the Property in accordance with the terms of the Plan, without requiring the payment of any filing fees, documentary stamp tax, deed stamps, stamp tax, transfer tax, intangible tax, or similar tax.

**F. Effectuating Documents; Further Transactions**

The Plan Administrator is authorized to and may issue, execute, deliver, file, or record such contracts, securities, instruments, releases, and other agreements or documents and take such actions as may be necessary or appropriate to effectuate, implement, and further evidence the terms and conditions of the Plan, without the need for any approvals, authorization, or

consents except for those expressly required pursuant to the Plan.

**G. Closing of the Bankruptcy Case**

At such time as the Plan Administrator deems appropriate, the Plan Administrator shall seek authority from the Bankruptcy Court to close the Bankruptcy Case in accordance with the Bankruptcy Code and the Bankruptcy Rules.

**ARTICLE VII - PROVISIONS GOVERNING DISTRIBUTIONS**

**A. Time and Method of Distributions**

No Distributions shall be made on account of any Claim that is not an Allowed Claim. The Plan Administrator shall make all Distributions under the Plan. Except as otherwise provided herein, upon the Effective Date, all Distributions shall be made by the Plan Administrator on a Distribution Date. Subject to the provisions of Bankruptcy Rule 2002(g), and except as provided in the Plan, Distributions to Holders of Allowed Claims will be made at the address of each such Holder set forth on the Schedules unless superseded by the address set forth on proofs of Claim filed by such Holders, or at the last known address of such Holder if no proof of Claim is filed, or if the Plan Administrator has been notified in writing of a change of address.

**B. Time Bar to Cash Payment**

Any Unclaimed Property on the Final Distribution Date shall be deemed paid to such Holder, and such Holder will not be entitled to any future or other Distributions under the Plan. Any Unclaimed Property shall constitute Cash and be redistributed to Holders of Allowed Claims in such Class on the date of the next Distribution. If the Final Distribution has passed, such Unclaimed Property shall escheat to the State of Virginia. Neither the Debtor nor the Plan Administrator shall have an obligation to make further Distributions to any Holder if a prior Distribution becomes Unclaimed Property. The Distribution otherwise payable to such Holders shall be redistributed to Holders of Allowed Claims in such Class.

**C. Finality of Distributions**

On or after the Effective Date, all Distributions that are made by the Plan Administrator pursuant to the terms of the Plan, shall be deemed Final, and no Person shall have any right to require or petition the Bankruptcy Court for a disgorgement of any such Distribution.

**D. Resolution of Disputed Claims**

**1. Allowance of Claims and Interests**

The Plan Administrator, shall have and shall retain any and all rights and defenses that the Debtor had with respect to any Claim or Interest, except with respect to any Claim or Interest deemed Allowed as of the Effective Date. Except as expressly provided in the Plan or in any order entered in the Bankruptcy Case before the Effective Date (including the Confirmation

Order), no Claim or Interest shall become an Allowed Claim or Interest unless and until such Claim or Interest is deemed Allowed under the Plan or the Bankruptcy Code or the Bankruptcy Court has entered a Final Order, including the Confirmation Order, in the Bankruptcy Case allowing such Claim.

## **2. Prosecution of Objections to Claims**

The Plan Administrator shall have the authority to File objections to such Claims, and the exclusive authority to settle, compromise, withdraw, or litigate to judgment objections on behalf of the Debtor's Estate to any and all such Claims, regardless of whether such Claims are in a Class or otherwise, subject to the terms hereof. From and after the Effective Date, the Plan Administrator or its designee(s) shall have the sole authority to administer and adjust the Claims Register to reflect any such settlements or compromises and no further notice to or action, order, or approval of the Bankruptcy Court with respect to such settlements or compromises shall be required.

## **3. Expungement or Adjustment to Claims Without Objection**

Any Claim that has been paid, satisfied, or superseded may be expunged from the Claims Register by, as applicable, the Debtor or the Plan Administrator, and any Claim that has been amended may be adjusted thereon by, as applicable, the Debtor or the Plan Administrator without a Claims objection having to be Filed and without any further notice to or action, order, or approval of the Bankruptcy Court.

## **4. Deadline to File Objections to Claims or Interests**

Any objections to Claims or Interests shall be Filed no later than the Claims Objection Bar Date.

## **E. Disallowance of Claims**

To the maximum extent provided by section 502(d) of the Bankruptcy Code, all Claims of any Entity from which property is recoverable by the Debtor or the Plan Administrator, as applicable, under section 542, 543, 550, or 553 of the Bankruptcy Code or that the Debtor or the Plan Administrator, as applicable, alleges is a transferee of a transfer that is avoidable under section 522(f), 522(h), 544, 545, 547, 548, 549, or 724(a) of the Bankruptcy Code shall be disallowed if (a) the Entity, on the one hand, and the Debtor or the Plan Administrator, as applicable, on the other hand, agree or the Bankruptcy Court has determined by Final Order that such Entity or transferee is liable to turnover any property or monies under any of the aforementioned sections of the Bankruptcy Code, and (b) such Entity or transferee has failed to turnover such property by the date set forth in such agreement or Final Order.

## **F. Amendments to Claims**

After the Confirmation Date, a Claim or Interest may not be filed or amended without the authorization of the Bankruptcy Court and any such new or amended Claim or Interest Filed

shall be deemed disallowed and expunged without any further notice to or action, order, or approval of the Bankruptcy Court; provided, that such Holder may amend the Claim or Interest Filed solely to decrease, but not to increase, the amount, number, or priority of such Claim or Interest, unless otherwise provided by the Bankruptcy Court.

**G. No Interest**

Unless otherwise specifically provided for in the Plan (including Article III hereof), by applicable law (including, without limitation, section 506(b) of the Bankruptcy Code), or agreed-to by, as applicable, the Debtor or the Plan Administrator, interest shall not accrue or be paid on any Claim, and no Holder of any Claim shall be entitled to interest accruing on and after the Petition Date on account of any Claim. Without limiting the foregoing, interest shall not accrue or be paid on any Claim after the Effective Date to the extent the final distribution paid on account of such Claim occurs after the Effective Date.

**ARTICLE VIII- EFFECTS OF CONFIRMATION OF THE PLAN**

**A. Binding Effect**

Except as otherwise provided in section 1141(d)(3) of the Bankruptcy Code, on or after the Confirmation Date, the provisions of the Plan shall bind all present and former Holders of Claims and Equity Interests in the Debtor, and their respective successor and assigns, whether or not the Claim or Equity Interest of such Holder is impaired under the Plan and whether or not such Holder has accepted the Plan.

**B. Injunctions**

Except as otherwise expressly provided in the Plan or the Confirmation Order and expressly excluding Ally Bank and Congressional Bank from the injunction described herein, on and after the Confirmation Date, all Entities who have held, hold or may hold Claims against the Debtor or Interests in the Debtor are permanently enjoined from and after the Confirmation Date from (a) commencing, conducting or continuing in any manner, directly or indirectly, any suit, action or other proceeding of any kind (including, without limitation, any proceeding in a judicial, arbitral, administrative or other forum) against the Debtor, the Debtor's estate, the Debtor, to the extent provided herein, any of their property or any direct or indirect transferee of any property of, or direct or indirect successor in interest to, any of the foregoing Entities, including without limitation the Plan Administrator, or any property of any such transferee or successor; (b) enforcing, levying, attaching, collecting or otherwise recovering by any manner or means, whether directly or indirectly, of any judgment, award, decree or order against the Debtor's estate, the Debtor, or the Plan Administrator; (c) creating, perfecting or otherwise enforcing in any manner, directly or indirectly, any encumbrance of any kind against the Debtor's estate, the Debtor, or the Plan Administrator; (d) asserting any right of setoff of any kind, directly or indirectly against any obligation due the Debtor's estate, the Debtor, or the Plan Administrator; and (e) taking any actions in any place and in any manner whatsoever that do not conform to or comply with the provisions of the Plan. Unless otherwise provided herein or in the



Confirmation Order, all injunctions or stays arising under or entered during the Bankruptcy Case pursuant to sections 105 or 362 of the Bankruptcy Code, or otherwise, that are in existence on the Confirmation Date shall remain in full force and effect until the Effective Date.

**C. Setoffs and Recoupment**

On or after the Effective Date, the Plan Administrator may, but shall not be required to, setoff and recoup against any Allowed Claim and the Distributions to be made pursuant to the Plan on account of such Claim, Causes of Action of any nature that the Debtor may have against the Holder of such Allowed Claim, except to the extent such Causes of Action are released by the Plan.

**D. Release of Debtor's Equity Owner**

**Upon Debtor's receipt of the New Value Contribution, the Equity Owner shall be released from any and all claims and obligations that the Debtor or any predecessor entity could now or could have ever asserted against the Equity Owner. This release shall be binding upon the Debtor, the Plan Administrator, any trustee in bankruptcy, and/or any other successor in interest to the Debtor.**

**ARTICLE IX**

**CREDITORS' REMEDY UPON DEBTOR'S POST-CONFIRMATION DEFAULT**

In the event that Debtor, prior to substantial consummation of the plan, materially defaults under its Plan obligations, an interested party may move in Bankruptcy Court for dismissal or conversion of the case. Upon confirmation of the Plan, an interested party may also bring an action in any court of competent jurisdiction to enforce the Plan's provisions. Notwithstanding the foregoing, Congressional Bank and Ally Bank shall be entitled to enforce their rights and remedies under their respective loan documents in accordance with state law and nothing in the Plan shall prohibit or enjoin them from so doing.

**ARTICLE X - DISSOLUTION OF THE COMMITTEE**

The Committee shall continue in existence until the Effective Date to exercise those powers and perform those duties specified in section 1103 of the Bankruptcy Code and shall perform such other duties as it may have been assigned by the Bankruptcy Court prior to the Effective Date. On the Effective Date, the Committee shall be dissolved and its members shall be deemed released of all their rights, duties, responsibilities and obligations in connection with the Chapter 11 Case or the Plan and its implementation, and the retention or employment of the Committee's Professionals and other agents shall terminate, except with respect to any Professional Fee Claim. The Committee and the Committee's Professionals shall not be entitled to assert any Professional Fee Claim for any services rendered or expenses incurred after the Effective Date.

## **ARTICLE XI CONFIRMATION PROCEDURES**

### **A. Statutory Requirements for Confirmation of the Plan**

At the Confirmation Hearing, the Bankruptcy Court will determine whether the following Confirmation requirements specified in section 1129 of the Bankruptcy Code have been satisfied. The Debtor believes that: (1) the Plan satisfies or will satisfy all of the statutory requirements of chapter 11 of the Bankruptcy Code; (2) they have complied, or will have complied, with all of the requirements of chapter 11 of the Bankruptcy Code; and (3) the Plan has been proposed in good faith. Specifically, the Debtor believes that the Plan satisfies or will satisfy the applicable Confirmation requirements of section 1129 of the Bankruptcy Code set forth below.

- The Plan complies with the applicable provisions of the Bankruptcy Code.
- The Debtor will have complied with the applicable provisions of the Bankruptcy Code.
- The Plan has been proposed in good faith and not by any means forbidden by law.
- Any payment made or promised under the Plan for services or for costs and expenses in, or in connection with, the Bankruptcy Case, or in connection with the Plan and incident to the Bankruptcy Case, has been disclosed to the Bankruptcy Court, and any such payment: (1) made before the Confirmation of the Plan is reasonable; or (2) is subject to the approval of the Bankruptcy Court, as reasonable, if it is to be fixed after Confirmation of the Plan.
- Either each Holder of an Impaired Claim has accepted the Plan, or will receive or retain under the Plan on account of such Claim property of a value, as of the Effective Date of the Plan, that is not less than the amount that such Holder would receive or retain if the Debtor were liquidated on that date under chapter 7 of the Bankruptcy Code.
- Each Class of Claims that is entitled to vote on the Plan has either accepted the Plan or is not Impaired under the Plan, or the Plan can be confirmed without the approval of such Voting Class pursuant to section 1129(b) of the Bankruptcy Code.
- Except to the extent that the Holder of a particular Claim will agree to a different treatment of its Claim, the Plan provides that Allowed Administrative Claims and Allowed Priority Claims will be paid in full on the Effective Date, or as soon thereafter as is reasonably practicable.
- At least one Class of Impaired Claims has accepted the Plan, determined without including any acceptance of the Plan by any insider holding a Claim in that Class.

- Confirmation of the Plan is feasible.
- The Debtor have paid the required filing fees pursuant to 28 U.S.C. § 1930 to the clerk of the Bankruptcy Court.
- In addition to the filing fees paid to the clerk of the Bankruptcy Court, the Debtor, or Plan Administrator will pay to the Office of the U.S. Trustee quarterly fees on the last day of the calendar month, following the calendar quarter for which the fee is owed in the Bankruptcy Case, for each quarter (including any fraction thereof) until the case is converted or dismissed, whichever occurs first.

#### **B. Best Interests of Creditors Test/Liquidation Analysis**

Section 1129(a)(7) of the Bankruptcy Code requires that each Holder of an Impaired Claim either accept the Plan or receive or retain under the Plan property of a value, as of the Effective Date, that is not less than the value such Holder would receive if the Debtor were liquidated under chapter 7 of the Bankruptcy Code. This requirement is often referred to as the “best interests” test.

In chapter 7 cases, unsecured creditors and interests holders of a debtor are paid from available assets generally in the following order, with no junior class receiving any payments until all amounts due to senior classes have been fully or any such payment is provided for: (a) holders of secured claims (to the extent of the value of their collateral); (b) holders of priority claims; (c) holders of unsecured claims; (d) holders of debt expressly subordinated by its terms or by order of the bankruptcy court; and (e) holders of equity interests.

The Debtor believes that the value of any Distributions if the Bankruptcy Case was converted to a case under chapter 7 of the Bankruptcy Code would be substantially less than the value of Distributions under the Plan because, among other reasons, Distributions in a chapter 7 case would be subject to payment of commissions to the trustee and delayed, thereby reducing the present value of such Distributions, and recoveries on account of accounts receivable would be substantially diminished by offsets, fees, and damages claims. In addition, the Debtor intends to partially fund the Plan through future revenue for future services, which source would not be available in the event of conversion to Chapter 7.

Because of Congressional Bank’s secured status, priority and unsecured claimants will fare better under the plan than in liquidation. Attached hereto as Exhibit J is the Debtor’s liquidation analysis and attached as Exhibit I is the Debtor’s projections regarding creditor recoveries under the Plan. The Debtor believes that conversion to chapter 7 and liquidation would result in approximately \$400,367.55 being paid to Congressional Bank only, less costs of the chapter 7 trustee, and, no Distributions to any other creditors. Liquidation through a wind down in chapter 11 overseen by the Special Controller aimed at minimizing the imposition of contract default damages would result in, at most, \$785,566.00 being paid to Congressional Bank only, less costs of the Special Controller, and no Distributions to any other creditors or parties in interest.

An analysis of Exhibits I & J demonstrates that the Plan provides substantially more to its creditors and interest holders than would result from a liquidation.

### **C. Feasibility**

Section 1129(a)(11) of the Bankruptcy Code requires that the Bankruptcy Court find that confirmation is not likely to be followed by the liquidation of the Debtor or the need for further financial reorganization, unless the Plan contemplates such liquidation. Indeed, section 1123(b)(4) of the Bankruptcy Code permits liquidation plans that “provide for the sale of all or substantially all of the property of the estate, and the Distribution of the proceeds of such sale among holders of claims or interests” in chapter 11 proceedings. The Plan provides for the liquidation of the Debtor and its Assets. Further, the Debtor maintains that there is a reasonable expectation that the payments required to be made during the term of the Plan will, in fact, be made. The Debtor’s financial projections upon which the Debtor’s assertions regarding feasibility are based is attached hereto as Exhibit C.

### **D. Confirmation Without Acceptance by All Impaired Classes**

The Bankruptcy Court may confirm a plan of liquidation over the rejection or deemed rejection of the plan of liquidation by a class of claims if the plan of liquidation “does not discriminate unfairly” and is “fair and equitable” with respect to such class.

#### **1. No Unfair Discrimination**

This test applies to Classes of Claims that are of equal priority and are receiving different treatment under the Plan. The test does not require that the treatment be the same or equivalent, but that such treatment is “fair.”

The Debtor does not believe the Plan discriminates unfairly against any Impaired Class of Claims. The Debtor believes that the Plan and the treatment of all Classes of Claims under the Plan satisfy the foregoing requirements for nonconsensual Confirmation.

#### **2. Fair and Equitable Test**

This test applies to classes of different priority and status (*e.g.*, Secured versus Unsecured) and includes the general requirement that no Class of Claims receive more than 100% of the amount of the allowed claims in such class. As to the dissenting class, the test sets different standards depending on the type of claims in such class. In order to demonstrate that a plan is fair and equitable, the Debtor must demonstrate:

##### **a. Secured Creditors**

Each Holder of a Secured Claim either (i) retains its liens on the property, to the extent of the Allowed amount of its Secured Claim and receives deferred cash payments having a value, as of the Effective Date, of at least the Allowed amount of such Claim, (ii) has the right to credit

bid the amount of its Claim if its property is sold and retains its liens on the proceeds of the sale (or if sold, on the proceeds thereof), or (iii) receives the “indubitable equivalent” of its allowed Secured Claim.

**b. Unsecured Creditors**

Either (i) each Holder of an Impaired Unsecured Claim receives or retains under the Plan property of a value equal to the amount of its Allowed Claim or (ii) the Holders of Claims that are junior to the Claims of the dissenting Class shall not receive any property under the Plan.

The Debtor believes that the Plan meets the applicable tests described above, even in the event that it is rejected by the Holders of one or more Classes of Claims and Equity Interests.

**ARTICLE XII  
CERTAIN FEDERAL INCOME TAX CONSEQUENCES OF THE PLAN**

Because the tax consequences to each Holder of a Claim against or Equity Interest in the Debtor may vary depending upon such Holder of a Claim’s or Equity Interest’s particular circumstances, all Holders of Claims against or Equity Interests in the Debtor and other persons affected by the Plan should consult their own tax advisor for a complete analysis of the tax consequences resulting from the confirmation of this Plan.

**ARTICLE XIII  
PLAN-RELATED RISK FACTORS AND ALTERNATIVES TO CONFIRMATION AND  
CONSUMMATION OF THE PLAN**

**A. Certain Bankruptcy Law Considerations**

**1. Parties-in-Interest May Object to Debtor’s Classification of Claims and Equity Interests**

Section 1122 of the Bankruptcy Code provides that a plan may place a claim in a particular class only if such claim is substantially similar to the other claims in such class. The Debtor believes that the classification of Claims and Equity Interests under the Plan complies with the requirements set forth in the Bankruptcy Code. The Debtor created six classes of Claims and one class of Equity Interests, each encompassing Claims or Equity Interests, as applicable, that are substantially similar to the other Claims and Equity Interests in each such Class. Nevertheless, there can be no assurance the Bankruptcy Court will reach the same conclusion.

**2. Failure to Satisfy Vote Requirement**

If votes are received in number and amount sufficient to enable the Bankruptcy Court to confirm the Plan, the Debtor intends to seek, as promptly as practicable thereafter, Confirmation of the Plan. In the event that sufficient votes are not received, the Debtor may seek to accomplish an alternative chapter 11 plan. There can be no assurance the terms of any such

alternative chapter 11 plan would be similar or as favorable to the Holders of Allowed Claims as those proposed in the Plan.

### **3. The Debtor May Not Be Able to Secure Confirmation of the Plan**

Section 1129 of the Bankruptcy Code sets forth the requirements for Confirmation of a chapter 11 plan, which include a finding by a bankruptcy court that: (a) such plan “does not unfairly discriminate” and is “fair and equitable” with respect to any non-accepting classes; (b) Confirmation of such plan is not likely to be followed by a liquidation or a need for further financial reorganization unless such liquidation or reorganization is contemplated by the plan; and (c) the value of distributions to non-accepting holders of claims within a particular class under such plan will not be less than the value of distributions such holders would receive if the debtor were liquidated under chapter 7 of the Bankruptcy Code.

There can be no assurance the requisite acceptances to confirm the Plan will be received. Even if the requisite acceptances are received, there can be no assurance that the Bankruptcy Court will confirm the Plan. A non-accepting Holder of an Allowed Claim might challenge either the adequacy of this Disclosure Statement or whether the balloting procedures and voting results satisfy the requirements of the Bankruptcy Code or Bankruptcy Rules. Even if the Bankruptcy Court determines that this Disclosure Statement, the balloting procedures and voting results are appropriate, the Bankruptcy Court could still decline to confirm the Plan if it found that any of the statutory requirements for Confirmation had not been met, including the requirement that the terms of the Plan do not “unfairly discriminate” and are “fair and equitable” to non-accepting Classes.

Confirmation of the Plan is also subject to certain conditions as described in the Plan. If the Plan is not confirmed, it is unclear what Distributions, if any, Holders of Allowed Claims would receive with respect to Allowed Claims.

The Debtor, subject to the terms and conditions of the Plan, reserves the right to modify the terms and conditions of the Plan as necessary for Confirmation. Any such modifications could result in a less favorable treatment of any non-accepting Class, as well as of any Classes junior to such non-accepting Class, than the treatment currently provided in the Plan. Such less favorable treatment could include a distribution of property to the Class affected by the modification of a lesser value than currently provided in the Plan, or no distribution of property whatsoever under the Plan.

### **4. Nonconsensual Confirmation of the Plan May Be Necessary**

Pursuant to section 1129(b) of the Bankruptcy Code, in the event that any impaired class of claims does not accept a chapter 11 plan, a bankruptcy court may nevertheless confirm such plan at the proponent’s request if at least one impaired class has accepted the plan (with such acceptance being determined without taking into account the vote of any “insider” in such class), and, as to each impaired class that has not accepted the plan, the bankruptcy court determines that the plan “does not discriminate unfairly” and is “fair and equitable” with respect to the

dissenting impaired classes. The Debtor believes that the Plan satisfies these requirements and the Debtor may request such nonconsensual Confirmation in accordance with subsection 1129(b) of the Bankruptcy Code. Nevertheless, there can be no assurance that the Bankruptcy Court will reach this conclusion.

**5. The Debtor May Object to the Amount or Classification of a Claim**

Except as otherwise provided in the Plan, the Debtor reserves the right to object to the amount or classification of any Claim under the Plan. The estimates set forth in this Disclosure Statement cannot be relied upon by any Holder of a Claim where such Claim is subject to an objection. Any Holder of a Claim that is subject to an objection may not receive its expected share of the estimated Distributions described in this Disclosure Statement

**6. Risk of Non-Occurrence of the Effective Date**

Although the Debtor believes that the Effective Date will occur promptly after the Confirmation Date, there can be no assurance as to such timing, or as to whether the Effective Date will, in fact, occur.

**7. Contingencies Not to Affect Votes of Impaired Classes to Accept or Reject the Plan**

The Distributions available to Holders of Allowed Claims under the Plan can be affected by a variety of contingencies, including, whether the Bankruptcy Court orders certain Allowed Claims to be subordinated to other Allowed Claims. The occurrence of any and all such contingencies, which could affect Distributions available to Holders of Allowed Claims under the Plan, shall not affect the validity of the vote taken by the Impaired Classes to accept or reject the Plan, or require any sort of revote by the Impaired Classes.

If the Plan is not Confirmed or consummated, the alternatives include, in addition to the dismissal of the Bankruptcy Case, (a) liquidation under chapter 7 of the Bankruptcy Code and (b) preparation and presentation of an alternative chapter 11 plan.

**B. Risk Factors That May Affect Distributions Under the Plan**

A number of unknown factors make certainty in creditor recoveries impossible. Among other things, the Debtor cannot know with any certainty, at this time, the number or amount of Claims that will ultimately be Allowed, and the Debtor cannot know with any certainty, at this time, the amount that will ultimately be recovered on account of the Litigation Claims. Further, since the Plan is to be partially funded by revenues from future operations, there are risks that the Debtor's projections about future operations may prove incorrect or that the Debtor may encounter operational problems not reasonably foreseeable as of the date of the Plan.

**ARTICLE XIV - RECOMMENDATION AND CONCLUSION**

The Debtor believes that the Confirmation and consummation of the Plan is preferable to

all other alternatives. Consequently, the Debtor urges all parties entitled to vote to accept the Plan, and to evidence their acceptance by completing and returning their Ballots so that they will be received on or before the Voting Deadline.

Date: July 8, 2016

/s/ Christopher S. Moffitt

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